THE RIGHTLESSNESS OF MEDIAEVAL ENGLISH JEWRY*

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'The wrong wrought upon the Jews under the law ... of Russia is all but incredible to Englishmen.' There is a note of pride in these words of Professor Dicey,[1] prefatory to an account of Russian anti-Jewish legislation, that should certainly not be begrudged to one of the leading jurists of a country that has selected a Jew as its attorney-general, and that has given to a Jessel the opportunity of making great and fundamental contributions to its system of equity jurisprudence. But, nevertheless, to the student of Jewish and of legal history there is in this censure of Russia something vaguely and reminiscently ironical. 'Jewish history has a melancholy sameness', remarks Dean Milman in his *History of the Jews*. And so, when we think of an Isaacs as the pleader for the Crown in London, we are startled by

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[1] Wolf, *Legal Sufferings of the Jews of Russia*, Introduction, i.

the *manes*, by the shades of Isaac of York or his historical prototype; Kishineff, Byelostock, and Odessa become the London and Norwich and Lynn of many centuries ago, the May Laws of 1882 echo the Statutes of Jewry of 1275, and we behold again the 'martyrs of the Isles of the Sea'. In the England that was mediaeval we shall find reflected the legal condition of the Jew in the Russia that is mediaeval. For, as a great Russian scholar has himself admitted, 'questions entirely surrendered to antiquarian research in the West of Europe are still topics of contemporary interest'[2] in the Empire of the Tsars.

An Anglo-Jewish writer in discussing the condition of the Jews of England at the time of their expulsion by Edward I, and lamenting the fact that we have mainly only legal records of the persecutions of the Jews in the thirteenth century, and but few literary expressions of their sufferings, tells us that for this reason 'the sufferers are to us mere shadows, and not even the most patriotic or the most imaginative of the Jews to-day can enter for a moment into their thoughts and feelings'.[3] It is not my intention to endeavour to rewrite history. It will be my aim simply to present certain legal phenomena of the twelfth and thirteenth centuries, which, though we assume even the utmost judicial objectiveness, must, from the common fund of experience of suffering humanity, enable us to appreciate somewhat, not merely the legal, but the mental outlook of the Jew in those days. My task has been that of a student of law, to approach the *golus* of pre-Expulsion England through sources certainly not

[2] Vinogradoff, *Villainage in England*, i.

[3] B. L. Abrahams, 'The Condition of the Jews in England in 1290'; *Transactions, Jewish Historical Society of England*, 1894–5, at p. 84.

biased in favour of Jewry, and hardly prone to overstate the case against the owners of the Jewry.

The first Jews probably came into England from Rouen with, or at any rate under the aegis of, William the Conqueror, about 1066. There are, it is true, provisions concerning the Jews in Anglo-Saxon ecclesiastical laws of Theodore and of Ecgberht,[4] laws forbidding intercourse between Jews and Christians, &c., but 'some of these', Freeman tells us, 'are, on the face of them, copied from the decrees of ancient councils, and all of them may be so',[5] while Liebermann, in discussing King Alfred and the Mosaic law, thinks that 'about the year 890 there was probably no soul living in Britain that knew Hebrew'.[6] On the other hand, the earliest reference to the Jews in civil legislation is a famous passage in the so-called *Leges Edwardi*, or Laws of Edward the Confessor, compiled in the twelfth century, which, to quote Freeman again, 'of course represent the state of things rather under William than under Edward'.[7]

'It is to be known', runs our first indication of the legal condition of mediaeval English Jewry, 'that all the Jews, wheresoever they be in the realm, are under the liege wardship of the king; nor may any of them, without the king's licence,[8] subject himself to any rich man, for *the Jews*

[4] For these laws see Jacobs, *Jews of Angevin England*, 1–4.

[5] *Hist. Norman Conquest*, V, note Q, 818–19.

[6] *Transactions, Jewish Historical Society of England*, 1907–8, at p. 22.

[7] *Op. cit.*, V, note Q, 818–19. See Pollock and Maitland, *History of English Law* (Cambridge, 1907), I, 468.

[8] For example of a licence to keep Jews, see Cal. Pat. Rolls, 14 Hen. III, 387, where the following grant to Benedict of Mauritania appears: 'Concessimus etiam eidem B. quod ipse et heredes sui habeant in perpetuum Judeos in terra sua commorantes, sicut R. de Pontibus et ceteri barones Pictavenses habent in terris suis.'

and all that they have are the king's,[9] and should any one detain them or their chattels, the king may demand them as his own.'[10] 'They came as the king's special men,' says Freeman, 'or more truly as his special chattels, strangers alike to the Church and the Commonwealth of England, but strong in the protection of a master who commonly found it to his interest to defend them against all others.'[11] Why, then, was it to the king's interest thus to protect them? It is, of course, unnecessary here to dwell at length on the oft-explained prohibition of usury, or the taking of any interest whatsoever, which was then regarded as, and termed, usury. Suffice it to say that the canons of the Church forbade usury, and that, as the Canon Law applied to Christians only, the Jews were the only non-illegal usurers in England. It is true the names of the clergy are among the most prominent in the usurious transactions of the Jewries. It is true that we can find records wherein a licence is granted to a Jew to sell to a king's clerk, an archdeacon of Dorset, a certain debt,[12] or where the great Robert Burnel himself, Edward I's Chancellor of England, is present in the Exchequer of the Jews, 'though not under writ', the plea says cautiously, to press payment of a debt purchased from a Jew,[13] but these relate the frailties of human beings and not the sanctioned acts of ecclesiastics. For the present we must assume that Christian usury is forbidden—even to the clergy—and that

[9] Freeman, *op. cit.*, V, note Q, 819: '... the Jews are just as under the Frankish kings declared to be the king's property.'

[10] Pollock and Maitland, *History of English Law*, I, 468.

[11] *Reign of William Rufus*, I, 160.

[12] Cal. Pat. Rolls, 16 Ed. I, 116.

[13] Rigg, *Sel. Pleas*, 39–40. For other dealings of Robert Burnel with the Jewish Exchequer, see Rigg, *Exch. Jews*, II, 41, 42, 238.

Coke correctly states the law of the land when he says that 'no usury was then permitted, but by Jews only'.[14]

Here, then, at the outset, are two distinct ideas affecting the relations of the Jew with the Crown. The Jews are the only non-criminal usurers or money-lenders in the kingdom, and, on the other hand, they must ply their usury, not for themselves, but for the Crown, 'for the Jews and all that they have are the king's'. We shall now consider the first proposition.

The fact that Jewish usury is not prohibited is an all-important one in determining the status of the Jews, for on it will rest our insistence that the doctrine of Glanvil, a twelfth-century law-writer, that 'all the effects of a usurer belong to the king',[15] is not the true ground for the king's control, not only over Jewish usury, but over Jewry itself. We use the term control, rather than jurisdiction, advisedly. In making this distinction, I fear that I find myself obliged to disagree with a scholar, who, as a pioneer in this field of inquiry, has been the light and the guide of every one seeking to tread thereon, and whose researches must be the starting-point of every new investigation. May I venture to differ from Professor Jacobs's interpretation of mediaeval legal theory and practice when he says that 'the king as king did not enter into any special relations with his Jews *quâ* Jews',[16] that, since the personalty of every usurer as such became escheat to the Crown on his death, with the Jews it was merely from this principle of escheat in perpetual application (because their property could only be acquired by

[14] 2 Inst., 89. Among pleas of the Crown to be heard at the Sheriff's *tourn* were those concerning usurers. See Britton, Lib. I, C. xxx.

[15] VII, C. 16.

[16] *Op. cit.*, xx.

usury) that the general presumption arose, 'which was inserted even in the so-called Laws of Edward the Confessor, that "the Jews themselves and all theirs belong to the king"'.[17] This generalization is made even more emphatically by Professor Jacobs in another place, when, denying the serfdom of the Jew, he writes that 'from the point of view of the State, a Jew, at any rate in the twelfth century, had *no* disabilities *quâ* Jew'.[18]

I have given prominence to the view of the learned historian of the Jews of England, because, if it be the correct one, it seems to me impliedly to give colour to the notion hinted at by many English writers, that Edward I's decree of expulsion was really a 'self-denying ordinance'[19] in the interests of religion and political science, a generous surrender of the rights of the Crown to the fruits of Jewish usury, which rights, it is intimated, were exercised by Edward with almost painful diffidence and reluctance, instead of a mere brutal discarding of 'a resource that was steadily decreasing, and was not worth husbanding',[20] a mere casting off of a perquisite of the Crown, since new Christian, and even Papal, usurers were at hand[21] to encroach upon the 'royal preserve'[22] of Jews.

What all these writers overlook is the fact that the

[17] *Social England*, ed. Trail, I, 473.

[18] 'Aaron of Lincoln' in *Jewish Quarterly Review*, X, 632. See also his article 'Aaron of Lincoln' in *Jewish Encyclopedia*, V, i.

[19] See, for expression of this sentiment, Coke, 2 Inst., 507; Prynne, *Short Demurrer*, part 2, 111; Rigg, *Sel. Pleas*, XLIII; B. L. Abrahams, 'Expulsion of the Jews of England in 1290', *Jewish Quarterly Review*, VII, 95, 443, 449; Leonard, 'Expulsion of the Jews', *Trans. Royal Historical Society of England*, New Ser., vol. 5, 103–46.

[20] B. L. Abrahams, *op. cit.*, 444.

[21] See *ibid.*, 457; Rigg, *op. cit.*, XXXIV.

[22] McKechnie, Magna Carta, 271.

provision against usury of the Canon Law, incorporated in the Common Law, which itself was Christian,[23] does not apply to Jews.[24] 'Our law', say Pollock and Maitland, 'did not regard usury as any offence in a Jew; on the contrary, it enforced his usurious contracts for him.'[25] Only the effects of a Christian usurer *dying in sin*,[26] i.e. dying as a usurer, went to the king, but the whole history of this epoch is a testimony to the development of a royal monopoly of usury, through the agency of the Jewry, living and dying in usury, that is recognized by law and hated by the barons and the Church accordingly. Furthermore, the notion of escheat cannot at all be applied to Jews, for it is intimately bound up with feudal tenure of land. 'If any one be convicted of a felony,' writes Glanvil, 'or has confessed to felony in open court, he becomes disinherited by the law of the land as an escheat.' 'It is to be observed', he continues, 'that if any such person holds in chief from our lord, the king, then not only his lands, but also his moveable goods and chattels, in whosesoever hands they may be found, shall be seized for the benefit of our lord the king, and the heir of such person shall not be entitled to any of them.'[27] The passage at first blush seems applicable. But to every tenure fealty is 'an inseparable incident',[28] and though by the early charters, in ordinary legal processes, the Jew could take his oath on the Pentateuch, so sacred a ceremony and investiture

[23] See Pollock, *Genius of the Common Law*, 78.

[24] See Holdsworth, *History of English Law*, I, 30; Pollock, *op. cit.*, 78; Davis, *England under the Normans and Angevins*, 273–4; Cunningham, *Growth of English Industry and Commerce*, I, 204.

[25] Pollock and Maitland, *History of English Law*, 469, n. 1.

[26] *Dial. de Scac.* ii, x. [27] VII, 17.

[28] Co.-Litt., Sec. 131.

required an oath that no Jew could take.[29] Hence he could do homage or fealty to no one, and the theory that the Jewish status much resembles that of the great barons, the tenants *in capite*, and that on this account Jewish lands and chattels acquired through usury are escheatable, falls to the ground. As Professor Ames has shown, 'only that could escheat which was capable of being held by a feudal tenure'.[30]

It is not only inaccurate but unnecessary to invoke the principle of escheat. The chattels in the hands of the Jew are the chattels of the king. If we are inclined to doubt the weight of the *Leges Edwardi*, we can bring the great Bracton himself, whose treatise on the Laws of England, written about the middle of the thirteenth century, has been called the flower of mediaeval English jurisprudence, to testify as follows: 'But a Jew cannot have anything of his own, because whatever he acquires he acquires not for himself but for the king, because they do not live for themselves but for others, and so they acquire for others and not for themselves.'[31] Here is enforced altruism with a vengeance, a compulsory self-abnegation and self-subordination that would dismay even the most fervent and consistent preachers of the mission of Israel among the nations.

It supports the soundness of a dictum uttered by one of the justices in 37 Hen. III (1243), 'Catalla Judeorum sunt Domini Regis propria',[32] and is merely a legal

[29] Rigg, *op. cit.*, xiii.

[30] Ames, 'The Disseisin of Chattels', 3 *Harvard Law Review*, 26.

[31] F. 386 b (Twiss Ed.).

[32] Rigg, *Sel. Pleas*, 24; Gross, *Exchequer of the Jews*, Papers Anglo-Jewish Historical Exhibition, 203, n. 83. See also John's Charter to the Jews wherein the Jews are declared to be free of toll, 'sicut nostrum

crystallization of a condition well illustrated by a very much earlier passage from the histories of William of Newburgh, written about 1194. The mediaeval chronicler, explaining the wrath of Richard I at the massacre of the Jews of York in 1190, and the destruction of the acknowledgements by Christians of debts to Jews kept in the cathedral there, says that these documents were kept there *by the royal usurers* ('a Judeis foenatoribus regiis ibidem reposita'). 'He [Richard] is indignant', the writer continues, 'and in a rage, both for the insult to his royal majesty and for the great loss to the treasury, for to the treasury belonged whatever the Jews, who are known to be the royal usurers, seem to possess in the way of goods.'[33] The king not only gets escheats from Christian usurers dying in sin, but has his own royal usurers, the 'Judei, quos foenatores *constat* esse regios'. The brutal attacks on the Jews do not wound the royal sense of humanity; they are merely a 'laesio regiae majestatis', an insult to his royal majesty. Professor Jacobs has happily described him as 'the Arch-Usurer of the Kingdom',[34] and it is in that capacity that Richard's feelings are outraged.

The theory of royal impartiality and Jewish civil equality mentioned above is, to some extent, based on two extracts, one from the *Dialogus de Scaccario* and another from Roger de Hoveden. I have carefully examined these passages, and cannot but derive from them additional

proprium catallum'. Jacobs, *op. cit.*, 214, thinks that the 'sicut' implies that Jewish chattels were not the king's property. But see Liebermann, *Leges Edwardi Confessoris*, 67: 'Streng übersetzt bildet es aber keinen Gegensatz zu E. C. F.'

[33] William of Newburgh, *Historia Rerum Anglicarum* (*R. S.*), Lib. IV, C. x.

[34] *Op. cit.*. 131-2.

proof that the Jews were legally controlled by the Crown merely *quâ* Jews, and that usury has nothing to do with the matter. In the Dialogue we read, 'When any one who has a lay estate, or citizen (*sic*) who deals in public usury, if he dies intestate or made a will *without having made those satisfaction whom he hath defrauded*, his money and his moveables are immediately confiscated and brought to the Treasury'.[35] Is it not very evident that, from the royal standpoint, the whole *raison d'être* of the Jew in England is usury, and that, had he attempted to make satisfaction to any one for taking usury, the royal will would have frustrated such intention? 'In every town in which they settled', says Mr. Pike,[36] 'they sat continually at the receipt of custom', custom for the king, whose weapon of extortion they became.

The passage from Hoveden is also significant. He recites a long list of Pleas of the Crown for the itinerant justices of 1194. They concern escheats, wardships, aides, and other sources of royal income, and also the crimes to be investigated.[37] In Article IX, the judges are to inquire concerning the massacres of York and other towns, 'of the slayers of the Jews, who they are, and of the pledges of the slain Jews and their chattels and lands and debts and deeds, and who has them and who owed them ... And all the pledges of the slain Jews are to be taken into the king's lands'. In Article XV, the judges are to inquire 'likewise of the usurers that are dead and their chattels'. In a comparison of these two articles, I cannot see any 'confirmation of the view that the goods of Jews escheated

[35] *Dial. de Scac.*, ii, x.
[36] *History of Crime in England*, I, 159.
[37] Roger de Hoveden (*R. S.*), III, 263-4.

at their death to the King *quâ* usurers and not *quâ* Jews'.[38] There was no purpose in putting the debts of dead Jews in one article and the chattels of usurers in another, unless there was a very clear distinction in the judges' mind between the two.

It must, therefore, be our conclusion that the establishment of Archae or chests in the Jewries for the registration of all Jewish bonds, effected by Richard after the massacres at York (the insult to his royal majesty) and on his return from exile sadly in need of money, was but a recognition of these two great principles of the tutelage of the Jews by the king and of the legal Jewish monopoly of the usury. In the harsh language of the ordinances organizing the English Jewry, we have this monopoly practically made a part of the financial system of the kingdom. 'All the debts, pledges, mortgages, lands, houses, rents, and possessions of the Jew shall be registered', commences the ordinances. 'The Jew who shall conceal any of these shall forfeit to the king his body and the thing concealed and likewise all his possessions and chattels, neither shall it be lawful for the Jew to recover the thing concealed . . . And charters shall be made of their contracts by way of indenture', one part of which 'shall remain with the Jew, sealed with the seal of him to whom the money is lent, and the other part shall remain in the common chest', until the debt is paid. No alterations are to be made in the charters, except before the chirographers in charge of the chest. And finally we come to a clause which in effect prescribes an oath of office for the Jew as royal usurer. 'Moreover, every Jew shall swear on his roll (i. e. on the scroll of the Pentateuch) that all his debts

[38] Jacobs, *op. cit.*, 156.

and pledges and rents and all his goods and possessions he shall cause to be enrolled, and that he shall conceal nothing as is aforesaid. And if he shall know that any one shall conceal anything, he shall secretly reveal it to the justices sent to them, and they shall detect and show unto them all falsifiers or forgers of the charters . . . where or when they shall know them, and likewise all false charters.'

The system of registration and espionage is not wholesale escheat based on the presumption of usury. It is a governmentalized industry. It is more than a 'sleeping partnership in Jewish usury'; it is a very wakeful and active participation in and superintendence of usury.[39] To what an extent it went is very clearly shown by a writ of 3 Hen. III (1218) to the custodians of the parts of England, commanding them to encourage the immigration of Jews (though, according to the laws of Edward the Confessor, usurers had been banished from the kingdom [40]), but to prohibit Jewish emigration without a royal licence. These 'custodes portuum Angliae' are to allow free passage into England of the Jews coming to dwell therein, but only 'after having received from them sufficient security, after the law of Jewry, that as soon as each one is able, they are to come to our justices assigned to the custody of the Jews, for the enrollment of their names in our rolls'.[41] The rolls referred to are, of course, those mentioned in the ordinances of the Jewry. Need we wonder, then, that in the very next year (1219) Pandulph, the Papal Legate to England, who was always 'in the van

[39] For striking examples of the difference in treatment of Jewish and other usury, see Cal. Close Rolls, 3 Ed. I, 108, 144 (*bis*).

[40] Glanvil, VII, c. 16, n. 1, tr. by Beames (English Legal Classics Series).

[41] Cal. Pat. Rolls, 3 Hen. III, 180.

of persecution',[42] writes to the Bishop of Winchester and Hubert de Burgh concerning certain usurious claims which the Jews are pressing against the Abbot of Westminster and others, that 'being desirous to further the king's honour, which is much lowered by all this, . . . we warmly ask and counsel you for your own honour to order the said justices not to judge the above cases until we come into those parts'.[43] Verily, his lament over the decline of kingly virtue would be as touching as that of a Hebrew elegist of the martyrs of York, who exclaims, 'All the princes of the sea have come down from their thrones',[44] did we not know that 'the scandal' of the case of the indebted ecclesiastics for whom Pandulph pleads 'did not suggest' (to the legate) 'that the debt should be paid and the debtors should be more prudent in the future, but that the debt should remain unpaid and the creditors should be exiled beyond the seas'.[45]

From the establishment of the Archae or registry chests for Jewish deeds, the Crown proceeds to the formation, as intimated above, of a special branch of the exchequer for the complete centralization of its control, not only of the Jewry as an agent of usury, but of the Jews in general.[46] The exact process of formation of this governmental judicial and financial bureau, which came into existence some time

[42] Pike, *op. cit.*, 188.

[43] Royal Letters (*R. S.*), I, 27, quoted by Gasquet, *Henry the Third and the Church*, 46.

[44] From 'A Hebrew Elegy', edited by Prof. Schechter, *Transactions, Jewish Historical Society of England*, 1903–4.

[45] Pike, *op. cit.*, 189.

[46] The number of archae given in Hoveden's *Capitula de Judeis* is six or seven, but that number was increased later on, when the residence of the Jews was restricted to certain towns, to about twenty-six. See Gross, *op. cit.*, 187.

during the last decade of the twelfth century,[47] is not very clear. Nor, indeed, will it be our purpose here to give an account of the Exchequer, or, in fact, of any of the governmental instrumentalities or methods of exerting control over the Jews or of making their life a burden. The sufferings of the Jews of mediaeval England have been well recounted by the mediaeval annalists, later by Prynne, Tovey, and Madox, and in our day by Gross, Pollock and Maitland, B. Lionel Abrahams and Professor Jacobs. Our task is merely to attempt to approximate some central legal idea, some constitutional basis for these sufferings, to determine the significance in mediaeval English law of the Exchequer of the Jews.[48]

We have thus far considered the legal status of the Jew in mediaeval England only from its negative aspect. The Jew is not an illegal usurer, and whatever disabilities he suffers are not incidental to the practice of usury. What, then, is positively the Jew's legal condition? 'The position of the Jews in mediaeval Europe, and therefore in Angevin England,' writes a scholar oft quoted above, 'was entirely determined by the attitude of the Church towards them. State and Church were one, and none could belong to the

[47] Gross, *op. cit.*, 174.

[48] Evidently Richard must have recognized the possibilities of his Jewry when in one year (1187) he took possession of debts amounting to some £20,000 from the estate of a single great Jewish financier, Aaron of Lincoln, who had, Prof. Jacobs tells us, 'first organized the Jewry and made the whole of the English Jews his agents throughout the country' (*op. cit.*, xvii). The collection of these debts, which amounted to more than half of the royal income for that year, actually required a 'special branch of the exchequer, the Scaccarium Aaronis, with two treasurers and two clerks to look after them for many years to come' (*ibid.*). In this Scaccarium Aaronis and the Ordinances of Jewry we have the germ of the Exchequer of the Jews.

State who did not belong to the State Church.'[49] The resultant rejection of the Jew by the feudal organism is happily and succinctly explained by Miss Bateson, an English co-worker of Maitland, in the following words, 'Nature herself offers no quainter spectacle than the efforts of the feudal organism to adapt itself to the Jewish intruder. In a society that was bound together by a system of oaths... came a group of men, incapable of taking Christian oaths. To find a place for this new category strained feudal subtlety to the utmost. . . . The Jews have been called royal villains, but more apt, perhaps, it would be to describe them as men "ferae naturae", protected by a quasi-forest law. Like the roe and the deer they form an order apart, are the king's property, and though protected by him as against others, nothing save the uncertain royal prudence protected them from their protector.'[50] Miss Bateson's classification of the Jews as 'men "ferae naturae"', though perhaps a trifle harsh, is very suggestive, especially when we remember Blackstone's definition of one species of *fera natura* as 'a movable wandering thing'.[51] But the point of her analysis is the futility of placing the Jew in any of the feudal categories. It is just by this attempt to classify mediaeval Jewry in one of those purely feudal categories, all of which are based on Christian economics and a Christian oath, by this effort, as Gross says, 'to squeeze the mediaeval Jew of England into some one of the well-defined classes enumerated by the old jurists, Glanvil, Bracton, and Fleta, that law writers, with their ponderous legal nomenclature, have raised so much dust . . . that they and their readers can see but little of the truth'.[52] Prynne,

[49] Jacobs, *op. cit.*, xi.
[50] *Mediaeval England*, 139.
[51] 2 Comm. 18.
[52] *Op. cit.*, 202, 3.

to cite but one instance, a learned law writer and antiquarian of the seventeenth century, who brought all his erudition to bear in opposition to Cromwell's restoration of the Jews to England, adopting Coke's terminology likens the Jew to a 'villain in gross, that is a villain which belongs to the person of the lord and belongeth not to any manor, lands, &c.',[53] i. e. a personal dependant unattached to any specific place. But no sooner have we comfortably endowed the Jew with all the supposed legal attributes of the villain in gross, than comes Vinogradoff, the great Russian who is teaching the English their legal history at Oxford, and, not content with having, as Maitland laments, 'by a few strokes of his pen deprived the English nation . . . of its folk-land',[54] disposes of their villains-in-gross by showing that the terms regardant or attached, and gross or unattached, as applied to villainage, 'have nothing to do with a legal distinction of status', but only with the modes of pleading and proof in the fourteenth century, and that they may apply to the same person from different points of view.[55]

'Rights, duties, capacities, or incapacities', we read in Austin's famous *Lectures on Jurisprudence*, 'can hardly be said to create a status or condition, unless they impart to the person a conspicuous character: unless they run through his position in a continued vein or stratum: unless they tinge his legal being with a distinctive and obvious colour.'[56] I think that we must conclude that the Jew in mediaeval England has a status composed of legal duties and incapacities alone. The sound position is that of

[53] Co.-Litt., Sec. 181.

[54] *Domesday Book and Beyond*, vi. [55] *Villainage in England*, 555-6.

[56] *Lectures on Jurisprudence*, 3rd ed., II, 976-7.

Scherer, who in his comparative study of mediaeval anti-Jewish legislation characterizes the Jew in England as a rightless financial object (or agency) absolutely dependent on the arbitrary will of the king ('ein rechtloses, von der Willkür des Königs ganz abhängiges Finanzobjekt').[57] Gneist's view is similar. He explains the origin of the Exchequer of the Jews by 'the original absence of legal rights in the Jews, whose position may be compared to that of the German Kammerknecht des Kaisers',[58] and finds that 'their legal capacity depends upon the royal favour alone'.[59] In this latter quotation from Gneist we have the most accurate and general summary of the whole situation, one that brings the mediaeval English Jew in touch with, and at the same time in striking contrast to, his nearest feudal equivalent, the villain. I do not intend to raise the dust of which Gross complains, but once we have the basic idea established, that in mediaeval England the Jew is legally *sui generis*, we must not forget that what we shall term the rightless legal capacity of the Jew was exercised through mediaeval legal institutions, founded on feudal conceptions. To understand the legal machinery of the Exchequer of the Jews, we must seek out the ideas as to villainage and other feudal institutions possessed by the justices of the Jewish Exchequer, who were royal officials, often learned in the laws.

'In theory and in practice', writes Vinogradoff in his work on Villainage in England, '. . . whatever was acquired by the bondman was acquired by the

[57] *Die Rechtsverhältnisse der Juden in den deutsch-österreichischen Ländern* (Leipzig, 1901), 89.

[58] *Constitutional History of England* (tr. Ashworth), I, 228, n. 4.

[59] *Ibid.*

lord. . . . The bondman had no money or chattels of his own. But the working of these rules was limited by the medieval doctrine of possession. Land or goods acquired by the serf do not *eo ipso* lapse into his lord's possession, but only if the latter has taken them into his hand. If the lord has not done so for any reason, . . . the bondman is as good as the owner in respect of third persons. He can give away or otherwise alienate land or chattels; he has the assize of novel disseisin to defend the land, and leaves the assize of mort d'ancestor to his heirs . . . a third person cannot except against a plaintiff merely on the ground of his personal status. As to third persons, a villain is said to be free and capable to sue all actions.'[60] I have quoted Vinogradoff at length because here he gives us the essence of villain status. The analogy of Jewish serfdom is tempting, and Pollock and Maitland have carried it out as far as it may safely go. 'This servility is a relative servility,' they say; 'in relation to all other men the Jew is free.'[61] The Jew is in possession of land and chattels as against all others, except the king. In fact, we find some Jews building 'in the middle of the city of York at a very great expense large houses like royal palaces . . . behaving', as the mediaeval chronicler complains, 'with almost royal state and pomp';[62] while in Stamford the sight of their wealth drove four Christian youths, who were on their way to the Crusades, to commit pillage and murder to get the wherewithal 'for the necessary uses of the pilgrimage they had undertaken'.[63]

[60] Vinogradoff, *op. cit.*, 68.

[61] Pollock and Maitland, *History of English Law*, I, 468.

[62] William of Newburgh, I, 312, from Jacobs, *op. cit.*, 117.

[63] *Ibid.*, I, 310, from Jacobs, *op. cit.*, 115.

'Again,' say Pollock and Maitland, 'the king does justice upon and between his Jews, as the lord does justice upon and between his villains . . . Lastly, the lord, when his own interests are not at stake, is content that his villains should settle their own disputes in their own way under the supervision of his steward, and so the king is content that, as between his Jews, Jewish law shall be administered by Jewish judges.'[64]

The analogy is attractive, and it holds good in all the particulars cited above, with one important exception. It is generally believed that the Jews in pre-Expulsion England had a limited juridical autonomy throughout the whole period of their sojourn therein. I do not think, however, that we can safely assert even a limited juridical autonomy for the Jews after the year 1242, despite the clause in John's Charter giving the Jews the right in pleas, other than those of the Crown, to administer their own Talmudical law in their own courts. The two writs printed in the note 65 below now make it very doubtful whether the

[64] Pollock and Maitland, *History of English Law*, I, 471–2.

[65] '*Pro David*', *Judeo Oxon*'.—Rex Magistris Mosseo de London', Aaron de Cantuar' et Jacobo de Oxon', Judeis, salutem. Prohibemus vobis ne decetero placitum teneatis de David', Judeo Oxon', et Muriel' que fuit uxor ipsius nec ipsum ad uxorem ipsam vel aliam capiendam vel tenendam aliquatenus distringatis; sciturі pro certo quod si secus egeritis gravem penam exinde incurretis. Teste ut supra.

'*Pro David*', *Judeo Oxon*'.—Quia de consilio venerabilis in Christo patris W. Eboracensis archiepiscopi, et aliorum de consilio regis provisum est quod *de cetero nulla capitula teneantur de Judeis in Anglia, mandatum est justiciariis ad custodiam omnibus Judeis Anglie ex parte regis firmiter inhibeant ne decetero capitula teneant in Anglia.* Et Peytevinum de Lincolnia, Muriel' que fuit uxor David' de Oxon', Benedictum filium Peitevini de Lincolnia et Vaalyn' et Mosseum de Barbun', Judeos, venire faciant coram prefato archiepiscopo et aliis de consilio regis in octabis Sancti Michaelis, ubicumque fuerint in Anglia, responsuri quare miserunt

Beth-Din as a judicial tribunal had the royal sanction and authority behind it after the year above mentioned. These writs of 26 Henry III (1242) clearly intimate that no 'chapters', i. e. no Jewish ecclesiastical courts, may, since the passage of a certain ordinance, which I have thus far been unable to find, be held concerning Jews in England, and that would-be litigants may not even send to their brethren abroad (in this case in France) for legal advice. Any attempt of the Beth-Din to hold unauthorized sittings and to enforce its judgements is to be severely dealt with.

The Jewish tribunals would seem later to have become merely consultative bodies, whose advice is taken on points of law, but whose decrees were not enforceable except at the pleasure of and through the justices of the Jews. As an illustration of the consultative character of the Beth-Din, we have a case reported in Rigg's Plea Rolls of the Exchequer of the Jews (I, 152), wherein in 1267 Milla, a widow, seeks free administration of her deceased husband's goods. But Samuel of Bohun claimed the widow to wife 'by reason of contract and commerce. The Masters of the Jewish Law (who, as has repeatedly been shown, most recently in an admirable chapter on the Masters of the Law in Stokes's Studies in Anglo-Jewish History, constituted the Beth-Din) came before the justices and pronounced the marriage null and void, therefore Milla is allowed to have free administration of her husband's goods without the said Samuel's consent.'

But returning to the analogy, just as there is a legal

in Franciam ad Judeos Francie pro capitulo tenendo super Judeos Anglie. Et mandatum est predictis justiciariis quod non permittant predictum David' de Oxon' distringi ad aliquam uxorem capiendam, nisi de voluntate sua. Teste ut supra.'—(Cal. Close Rolls, 26 Hen. III, 465.)

difference between Jewish and Christian usury, so are there certain vital differences between Christian villainage and Jewish serfdom. To Christian villainage in Bracton's day —and Vinogradoff's analysis is largely based on Bracton— the Common Law applies, and to the Christian villain the Common Law to a certain extent offers protection. The rule that the villain has no action against his lord has one important exception: if the defendant had taken away the plaintiff's plough and plough-team, then 'wainage' would be for the recovery of these in the Royal Courts.[66] Here is evidently a survival of the time when the villains were free Anglo-Saxon peasants, having rights in their land and oxen. In fact, Maitland has shown that the villains before Domesday had the ownership of their land and oxen,[67] and that they were not tied to the soil as in the days of Bracton.[68] Not till Henry II's day can we say that 'the land he occupied was part of his lord's demesne', and that 'his chattels were his lord's'.[69] On the other hand, the Jew, as we have said above, is not in the protection of the King's Courts, and has no remedy whatsoever against his lord. The principle that 'the Jews and all that they have are the king's' came into England with the Conqueror as the consensus of mediaeval Christian Europe.[70] Here, then, is the fundamental distinction between Jewish serfdom and Christian villainage. 'The law of villainage contained heterogeneous elements, and had been derived partly from the status of free ceorls'[71] of

[66] Vinogradoff, *op. cit.*, 74-5.

[67] Maitland, *op. cit.*, 54.

[68] *Ibid.*, 51.

[69] *Ibid.*

[70] 'The Normans had then no written law to bring with them to England, and we may safely acquit them of much that may be called jurisprudence.' (Pollock and Maitland, *History of English Law*, I, 77.)

[71] Vinogradoff, *op. cit.*, 421.

Anglo-Saxon times, while the law of Jewish serfdom has no source in any free institution.[72]

The status of the Jew is unique, different from that of any feudal category. 'The Jews,' says Bishop Stubbs, 'like the forests, were the special property of the king, and, as property worth careful cultivation, they had peculiar privileges and a very dangerous protection.'[73] It is interesting to see how often scholars have compared the status of the Jews to that of the forests in England. Nor is there anything fanciful in this analogy of Stubbs, Miss Bateson, and many others.[74] It would certainly appear sound looked at through the royal eyes. In the Patent Rolls of 40 Hen. III, we find an appointment of Guy de Rupe Forti, to keep the castle of Colcestre with the hundred and demesnes appertaining thereto and certain revenues and escheats therefrom, 'saving to the king and his heirs (among other things) the wood of Kyngeswoode' and 'the Jewry of that town'.[75]

Well, indeed, did the king protect his royal preserve of Jewry, and well did he cultivate it. Jews are to be impleaded and to plead only 'before Us' (*coram nobis*),[76] according to the charter of King John, and to wage his

[72] It is not strange, therefore, that, while Article XX of the great Charter of 1215 protects the wainage of a villain in the king's mercy, Articles X and XI, aimed, not so much at the Jews as at their royal proprietor (see Gross, *op. cit.*, 209), deprived the Jews of considerable income (see Adams, *Origin of the English Constitution*, 260).

[73] *Constitutional History of England*, II, 558–9.

[74] See Lyte, *History of University of Oxford*, 58–9; Davis, *op. cit.*, 173–4: Pollock and Maitland, *History of English Law* (Cambridge, 1907), i. 472.

[75] Cal. Pat. Rolls, 40 Hen. III, 482.

[76] See Holdsworth, *op. cit.*, 31; Jacobs, *op. cit.*, 216; Rigg, *Sel. Pleas*, XXI–XXII, 2.

law on the Scroll of the Pentateuch (*super rotulum suum*),[77] and a little later the justices of the Jews have exclusive jurisdiction in all cases affecting Jews save in Pleas of the Crown. All poachers on the 'royal preserve' of the Jewry are emphatically sent about their business, and the ecclesiastics, who ache to get jurisdiction of the Jews, suffer most thereby. There is a significant writ of 1218 to the Sheriff of Hereford, wherein, despite the prohibition of the bishop, the Jews are allowed to continue to hold their 'commune' as in the time of John. They are to have the same privileges 'as they were accustomed to in the time of our lord, King John'. And the writ continues: [We command you] 'to cause proclamation to be made throughout all your bailiwick that we have granted to them (the Jews) our firm peace, notwithstanding any prohibition issued by the Bishop of Hereford, since nothing pertaining to our Jews concerns him. And we prohibit you to lay hands upon them or their chattels, or to take or imprison or implead them or to allow them to be impleaded by another. And you are not to allow them to be impleaded in Court Christian.'[78]

The exclusive jurisdiction of the justices of the Jews is maintained, not only through such writs, but by justices themselves by right of supersedeas and prohibition,[79] and by giving Jews wrongfully impleaded a remedy against the

[77] See note 70 above, also Bracton's *Note Book*, ed. Maitland, II, plea 918, and Rigg, *Exch. Jews*, II, 56.

[78] Cal. Pat. Rolls, 2 Hen. III, 157. The same writ is issued to the Sheriff, Constables, or citizens of Worcester, York, Lincoln, Stamford, Bristol, Gloucester, Northampton, Southampton, and Winchester. Prynne, *Short Demurrer*, part 2, 42; Cal. Pat. Rolls, 5 Hen. III, 290; Rigg, *Sel. Pleas*, 78; Cal. Close Rolls, 16 Ed. I, 497.

[79] See Tovey, *Anglia Judaica*, 48; Prynne, *Short Demurrer*, part 2, 48, 51.

offender. Thus a day is assigned to Richard de Colleshul, 'for that he wronged Solomon, causing him to be impleaded in the Court of the Bishop of Sarum's manor of Ramesbury, and to receive judgement, against the Crown and the king's dignity',[80] and a commission of oyer and terminer is issued to investigate the wrongful impleader of Henna, a Jewess, before the archdeacon's court in Nottingham for blasphemy.[81]

How independent a legal and financial entity the Exchequer of the Jews becomes, despite the fact that it is connected with and controlled by the great Exchequer,[82] is well brought out in a writ of 1280 that seeks to end the custom of directly petitioning the king as the source and fountain of justice. 'Whereas', it runs, 'men coming to Parliament are frequently delayed and disturbed by the multitude of petitions brought before the king, most of which might be disposed of by the Chancellor or justices, it is provided that all petitions that concern the seal (*le sel*) shall first come to the chancellor, and those that concern the exchequer shall come to the exchequer, and those that concern the justices or law of the land shall come to the justices, and those that concern the Jewry shall come to the justices of the Jewry.'[83] The Jewish Exchequer is thus a separate royal court, which is not concerned with the law of the land.

With what law, then, is the Jewish Exchequer concerned? What law did the justices administer for the Jews, and how

[80] Rigg, *Exch. Jews*, I, 234.

[81] Cal. Pat. Rolls, 6 Ed. I, 287. See also Rigg, *Exch. Jews*, II, 129; XIII-XIV.

[82] See Madox, 249-55.

[83] Extracts from the Close Rolls, Ed. I (1278-88); *Transactions, Jewish Historical Society of England*, 1899-1901, 204-5.

could any law be administered for them, if our contention be correct that the Jew is rightless, that he has no 'persona standi in iudicio', no capacity to sue as of right?[84] I am not about to commit that most dire of legal heresies, to attempt to conceive of a legal remedy that is not based on a legal right. The legal rights were there, in the court-room, but they belonged to the Crown, and were merely exercised by the Crown through his chattels, the Jews. The 'feudal lord had no right to bring an action in the name of his villain',[85] and also with his serfs the king usually allowed the Jews to sue in their own name. When the royal interests are not immediately involved, the justices apply the *Consuetudo et Assisa Iudaismi*, the law and custom of Jewry, as developed by the justices in accordance with the king's will and the peculiar legal condition and financial methods of the Jews.[86] The spirit of this law is practically that of a charter of 52 Hen. III (1268) to the citizens of London, reading: 'De Iudaeis autem nostris nos et civitatem nostram praedictam tangentibus providebimus nos et heredes nostri, prout melius nobis videbimus expedire'[87] (Concerning our Jews coming to us and our aforesaid city, we and our heirs shall provide as we shall see will profit us to our better advantage). The king gives them an elaborate legal machinery, over which he has a strict and strenuous control. He directs many of their financial operations,[88] and sometimes takes these out of the

[84] See Gneist, *op. cit.*, I, 228, n. 4.

[85] Ames, 'Disseisin of Chattels', 18, *Harvard Law Review*, 27.

[86] See Rigg, *Sel. Pleas*, xxi.

[87] Liber Custumarum (*R. S.*), 251.

[88] For extension of time of payment of debts owed to Jews by such as are abroad on the king's service, see Cal. Close Rolls, 12 Hen. III, 410, 414, 415 (*bis*), 439, and 26 Hen. III, 503. For orders to make proclamation in

hands of his usurers altogether.[89] Benedict of Lincoln and six other Jews have to pay him to make sure that he 'will not cause any extent, prorogations of terms, quittance or gift to be made of debts which are owing to them' for five years.[90] Edward I assigns a debt due to one of his Jews to a citizen of Genoa in part payment of moneys he (Edward) owes the Genoese.[91] He not only assigns Jewish debts but Jews themselves to this or that member of his family to have and to hold with all their goods, debts, and chattels, free and quit of all aids, tallages, imprests and demands, with all the liberties, laws, and customs of the Jewry.[92] And Henry III assigns the Jewry *en masse*, first to Prince Edward,[93] his son, who was later to expel the Jews, and then, by way of mortgage, to the Cahorsin money-lenders, who plied their usury under Papal protection.[94]

Edward grants to Eleanor, his mother, that 'no Jew shall dwell or stay in any towns which she holds in dower',[95] and in view of this grant we have a brutal order to the justices 'that the Jews of Marlborough be deported to our town of Devizes, the Jews of Gloucester to our town of

the Synagogues that Jews holding certain chirographs are to appear before the Justices at Westminster regarding them, see Rigg, *Exch. Jews*, 101, 106, 112, 113, 115, 183, 263, and Rigg, *Sel. Pleas*, 12.

[89] For an assignment to Edward's Consort, Eleanor, of all debts due from Norman d'Arcy to the Exchequer of the Jews, see Cal. Close Rolls, 9 Ed. I, 70; for a wholesale assignment to Eleanor of debts in the chirograph-chests at Ely, see Cal. Pat. Rolls, 13 Ed. I, 212.

[90] Cal. Pat. Rolls, 46–7 Hen. III, 205. For a similar grant, see *ibid.*, 201.

[91] Cal. Close Rolls, 4 Ed. I, 259.

[92] Cal. Close Rolls, 6 Ed. I, 466. See also *ibid.*, 11 Ed. I, 245, and Rigg, *Exch. Jews*, II, 170.

[93] See Prynne, *Short Demurrer*, part 2, 52.

[94] See *ibid.*, 55, and note 21 above.

[95] Cal. Pat. Rolls, 3 Ed. I, 76.

Bristol, the Jews of Worcester to our town of Hereford, and the Jews of Cambridge to our town of Norwich, with their chirograph chests and all their goods . . .'[96] This heartless root and branch deportation will hardly support the notion that the Jews had either the rights of property, which constitute ownership or dominion, or those 'personal rights which belong to every person as such'.

Now, in conceiving the Jewish status to be that of what Maitland would call 'the rightless slave that is a thing', I am perfectly aware that we must not lose our historical sense of proportion, that we must remember the circumstance, time, and place of legal phenomena before setting them down as agencies of oppression. In the England of the epoch under discussion perhaps the only thoroughly non-sectarian institution was royal extortion—that is to say, Christian and Jew were often mulcted alike with utter impartiality by the Crown in the course of their business operations, litigation, and even social relations. In Appendix V of his 'Jews of Angevin England' Professor Jacobs has shown us that 'for nearly every one of the payments made by an English Jew' he can produce evidence (from Madox's *History of the Exchequer*) of similar fines, &c., made by other Englishmen.' A good idea of the king's financial instruments is to be gained from such writs as, for instance, we find in the Calendar of the Patent Rolls for 4 Edward I (p. 138), wherein there is recorded a 'mandate to the mayor, bailiffs, and citizens of York, on complaint of the commonalty of that city, that the smaller men are rated to tallages, fines, contributions, and amercements out of proportion to their means, to charge them justly henceforth, lest the king have to apply other measures.'

[96] Rigg, *Sel. Pleas*, 85 : cf. Cal. Fine Rolls, I, 48 (3 Ed. I).

But the fact that Christians also were made to pay for various legal processes and business operations does not justify the conclusion that they were on as low a legal plane as the Jews, and, likewise, the fact that the Jews used certain common legal processes that were also used by Christians hardly warrants the assertion quoted above, that, 'from the point of view of the State, a Jew, at any rate in the twelfth century, had *no* disabilities *quâ* Jew'. The rights of Englishmen may have been slight enough, and their duties onerous enough, when viewed from the point of view of the twentieth century, but they were the rights and duties of Englishmen, and in these categories the ephemeral privileges and licences and the heavy responsibilities of the Jews cannot be included. Indeed the very phrase 'Englishmen of Jewish faith' has a tragi-comic ring to me, at least when used of the martyrs of York.

We come, therefore, to the conclusion that the Jew has not mere 'disabilities' under the mediaeval system of English law, but that he does not exist at all for that system except as what we might call an inanimate financial agency of the Crown. In this capacity he is well protected, as, for instance, in a grant recorded in the Patent Rolls of 9 Edward I (p. 433), '. . . with the assent of the commonalty of the Jews of England that Hagin, son of Deulacres, shall hold for life the office of priest of the said Jews (presbiteratus Judeorum eorundem) . . .; directed to all justices and others and to the Jews of England, who are to protect the said Hagin in his office. And if any offence shall be done to him, it shall be amended to him *as to the king's demesne Jew*, whom he specially retains in the said office, saving to the king the amends due to the king as his forfeiture.'

Even if we find a Jew getting a grant in fee,[97] making a final concord,[98] buying and selling manors,[99] succeeding to a father's lands,[100] purchasing 'a toft and a bovate in Refham with the men there dwelling',[101] and 'performing all the legal processes in connexion with the tenure of land, exactly as all the rest of the king's lieges' on the one hand, and if, on the other hand, the pleas rolls of the Jewish Exchequer and other documents give us actions of detinue,[102] breach of covenant,[103] trespass,[104] writ of battery,[105] claims of dower,[106] wrongful defamation,[107] replevin,[108] and debt,[109] all these do not affect fundamentally the Jewish status. The Jew, of course, conducts the king's business through the legal processes then in use, but he uses these processes of grace, or rather as long as it suits his royal master. The fountain of justice is as uncertain in flow as it is muddy in contents. In the formidable catalogue of actions given above, he does not sue in maintenance of his own right, but as a medium through which the right of the Crown is exercised. It is the right of the Crown that his Jews

[97] Jacobs, *op. cit.*, 177; see Bracton, f. 113.

[98] *Ibid.*, 99. [99] *Ibid.*, 80. [100] *Ibid.*, 145.

[101] Cal. Charter Rolls, II, 21 (43 Hen. III).

[102] See Rigg, *Exch. Jews*, I, 120, 131, 132, 139, 143 (*bis*), 145.

[103] *Ibid.*, 123, 4. [104] *Ibid.*, 158. [105] *Ibid.*, 182.

[106] *Ibid.*, 192, 232, 283; Cal. Close Rolls, 8 Ed. I, 47–8.

[107] Rigg, *Exch. Jews*, ii; *Sel. Pleas*, 70. Defamation is brought here nearly a century before it appears in any other royal court. This is an excellent example of the consistency with which the Crown maintained its exclusive jurisdiction over the Jews at the expense of the ecclesiastical courts. The ecclesiastical and also the seignorial courts then had jurisdiction in all pleas of defamation. See Holdsworth, *op. cit.*, 316–17; Pollock and Maitland, *History of English Law*, I, 130: Veeder, 'History of the Law of Defamation' in *Select Essays in Anglo-American Legal History*, III, 446–7.

[108] Rigg, *Exch. Jews*, II, 175, 254.

[109] *Ibid.*, 289, 298.

shall acquire wealth for the royal use, and that in this acquisition they be not injured by either Jews or Christians, and in the exercise of this right he is not averse to making the Jews parties to his actions, and allowing them to pay heavily for the privilege.[110]

The grant to the Sheriff of Salop, in aid of the bridge at Moneford, of pontage, i. e. the right of charging toll, with power of fining for rafts of firewood or timber damaging the bridge, and 'a special custom on every Jew and Jewess crossing the bridge, on horse-back 1*d.*, on foot ½*d.*',[111] the grant in return for a sum of money 'to the Burgesses of Derby, they and their heirs for ever, that no Jew or Jewess by the king and his heirs (*sic*) shall henceforth remain in the said town';[112] the mandate to all the Jews of England to take care of Seman, the king's balister, equipping him as the king had formerly ordered;[113] the acknowledgement by Hagin 'on behalf of the whole community of the Jews of England of a debt of £39 to Peter Ercaurd, Merchant, for wines had from him to the use of the king';[114] and the law that, not only were Jews and Jewesses to wear the yellow badge, but to refrain from purchasing and eating meat during Lent;[115] these are some of the true indicia of the legal condition of the Jews in England, *quâ* Jews, in the Middle Ages. Truly they are as men *ferae naturae* (wild beasts), the chattels of the king, who protects them

[110] They paid for a proclamation of debts (Rigg, *Exch. Jews*, II, 13), for a scrutiny of the Rolls (*ibid.*), and many other preliminaries to actions, and for direct interference by Letters Patent with the course of justice as administered in the Exchequer (see Rigg, *Sel. Pleas*, 19-26).

[111] Cal. Pat. Rolls, 12 Ed. I, 116.

[112] Cal. Pat. Rolls, 45 Hen. III, 153. See also *ibid.*, 50 Hen III, 613.

[113] Cal. Pat. Rolls, 22 Hen. III, 229.

[114] Rigg, *Exch. Jews*, I, 201.

[115] See Rigg, *Exch. Jews*, XLIX.

mercilessly till he expels them. In 1290 they go forth again on their march through the *golus*, some to perish and many to fall a prey to some new protector. Here again, in their subsequent history, their lot is that of the roe and the deer in the royal forests, for, as Blackstone tells us, when the king 'voluntarily abandons the use' of these animals, 'they return to the common stock and every man has an equal right to seize and enjoy them afterwards'.[116]

[116] 2 Bl. Comm. 14.